



BEFORE THE MADURAI BENCH OF MADRAS HIGH COURT

DATED: 05.01.2017

CORAM:

THE HONOURABLE MS.JUSTICE V.M.VELUMANI

C.R.P (MD) No.2647 of 2016 (PD)

and

C.M.P (MD) No.12447 of 2016

V.Sumathi

..Petitioner/Respondent/Defendant

Vs.

R.Ramesh

..Respondent/ Petitioner/Plaintiff

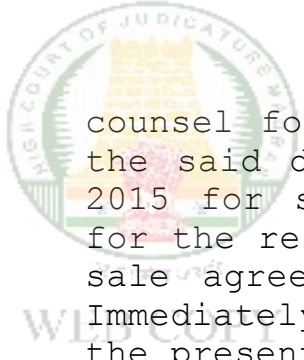
PRAYER: Civil Revision Petition is filed, under Article 227 of the Constitution of India, to set aside the fair order and decreetal order, dated 28.04.2016 made in I.A.No.578 of 2015 in O.S.No.191 of 2012 on the file of the Vth Additional District Court, Madurai.

For Petitioner : Mr. J.Barathan for Mr.K. Renganathan
For Respondent : M/s. A.L.Ganthimathi

ORDER

The petitioner has filed this Civil Revision Petition to set aside the fair order and decreetal order, dated 28.04.2016 made in I.A.No.578 of 2015 in O.S.No.191 of 2012 on the file of the Vth Additional District Court, Madurai.

2.The petitioner is the defendant. The respondent is the plaintiff. The respondent filed O.S.No.191 of 2012 for specific performance of agreement of sale, dated 07.10.2011. During chief-examination of respondent as P.W.1, the agreement of sale, dated 07.10.2011 was marked as Ex.A1. The learned counsel for the petitioner cross-examined the respondent and his evidence was closed. The suit was posted for petitioner's side evidence. At that time, the petitioner filed I.A.No.160 of 2015 for sending Ex.A1 agreement of sale for expert opinion. According to petitioner, Ex.A1 is not original and it is only a Colour Xerox. In the circumstances, the respondent filed I.A.No.578 of 2015 for re-construction of Ex.A1 sale agreement bearing document No.3929/2011, dated 07.10.2011 of Thirupparankundram Sub Registrar Office by substituting certified copy of the sale agreement. <https://hservices.ecourt.gov.in/hservices> the respondent, he filed original agreement of sale deed, dated 07.10.2011 and at the time of his evidence, the original sale agreement, dated 07.10.2011 was marked as Ex.A1 and



counsel for the petitioner cross-examined the respondent based on the said document. Only, when the petitioner filed I.A.No.160 of 2015 for sending the sale agreement for expert opinion, counsel for the respondent verified the bundle and found that the original sale agreement has been removed and colour xerox was replaced. Immediately, he gave a complaint to the learned Judge and filed the present petition.

3.In the said I.A.No.578 of 2015, the petitioner filed counter affidavit and opposed the said application stating that the respondent filed only a colour xerox. Original sale agreement is with one Paranthaman, S/o.Paramathi. On 25.01.2015 the said Paranthaman showed the original agreement of sale to the petitioner and also furnished the copy of the same to him. He promised to return the original agreement of sale to the petitioner, when he repay the sum of Rs.1,00,000/- to said Paranthaman. Therefore, Ex.A1 filed and marked by the respondent on 08.01.2014 is only a colour xerox and prayed for dismissal of the said application.

4.The learned Judge considering the averments made in the affidavit and counter affidavit and the fact that the agreement of sale dated 07.10.2011 was marked as Ex.A1 on 08.01.2014 and original of the said document is missing from the Court, allowed the said application.

5.Against the said order of allowing the petition to permit the respondent to re-construct the Ex.A1 by producing certified copy of the Original, the petitioner has come out with the present Civil Revision Petition.

6.The learned counsel for the petitioner submitted that the learned Judge failed to see the original sale agreement is with Paranthaman, who is son of Paramathi, from whom he borrowed a sum of Rs.1,00,000/- to be paid to the respondent for cancellation of sale agreement. The learned Judge failed to see that the respondent filed and marked only colour Xerox of the sale agreement and without conducting any enquiry as to whether original was filed and marked as Ex.A1 and subsequently, it was substituted by colour xerox, allowed the said application. The learned Judge failed to consider the counter filed by the petitioner. The learned Judge ought to have allowed the application filed by the petitioner for sending the document to the expert opinion.

7.The learned counsel for the caveator/respondent submitted that the respondent filed and marked as original sale agreement as Ex.A1. The respondent was cross-examined by counsel for the petitioner. At the time no objection was raised that Ex.A1 was only colour Xerox and same cannot be marked. The original agreement of sale filed by the respondent were lost by Court and



complaint given by the respondent to the learned Judge, is pending. The learned Judge considering this aspect, allowed the application permitting the respondent to reconstruct the Ex.A1 by substituting certified copy of the document.

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8. I have heard the learned counsel appearing for the petitioner and the learned counsel appearing for the caveator/respondent and also perused the entire materials on record.

9. From the materials, it is seen that the respondent filed suit for specific performance of agreement of sale. During trial, the learned counsel for the respondent filed agreement of sale, dated 07.10.2011 and marked as Ex.A1. According to the respondent, he filed original agreement of sale. The learned counsel for the petitioner did not object to mark the said document on the ground that it is only a colour xerox. The respondent also given a complaint stating that the original agreement of sale was lost in the Court and it was replaced by colour Xerox and the said complaints are pending. In the circumstances, the learned Judge considering the contention of the learned counsel for the petitioner that the original agreement of sale was filed before the Court was lost in the Court and it was replaced by colour xerox, allowed the application by giving cogent and valid reason and there is no illegality or irregularity warranting interference by this Court.

10. In the result, the Civil Revision Petition is dismissed. No costs. Consequently, connected miscellaneous petition is also dismissed.

Sd/-

Assistant Registrar (CS-I)

/True copy/

Sub Assistant Registrar/

To
The V Additional District Judge,
Madurai.

+1Cc to Mrs. Gandhi mathi, Advocate, SR. NO. 1028
+1cc to M/s.K.Renganathan Advocate in SR. No.768

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